

## Chapter 9 : EXAMPLES

### 9.1 Example 1 -- Prison Only

Defendant was found guilty of Burglary II (Master Grid Group 7) for an offense committed on 2/9/2004.

#### *Prior convictions (or Criminal history)*

Assault With Intent to Kill (DC):	4/15/1997	Yes	3 points
PWID w/ armed (DC):	5/20/2002	Yes	2 points
PWID Cocaine (DC):	9/5/2003	Yes	<u>1 point</u>
			6 points

#### *Explanation of Scoring*

The assault with intent to kill conviction (Master Group 5) is 3 points. The PWID w/armed (Drug Group 1) is a 2 point offense and the PWID Cocaine is 1 point. All of them were sentenced less than 10 years before the commission of the instant offense. Thus, they all count. This offender's criminal history score is 6, which puts the defendant in column E.

#### *Sentence*

Defendant's current offense and criminal history put him in Box 7E. Box 7E is a prison-only box; in other words, the guidelines recommend that the in/out decision be "in" (prison). The guideline grid calls for a prison sentence of 36+ months. Thus, any sentence of 36 months or more would be a compliant sentence.<sup>16</sup>

A sentence of less than 36 months, a short split sentence, or a probation sentence would not be a compliant sentence unless the judge finds a departure principle. Without a departure principle, a sentence of less than 36 months is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

### 9.2 Example 2 -- Probation Permissible

Defendant pled guilty to Carrying a Pistol Without a License (Master Grid Group 8), for an offense committed on 2/9/2004.

#### *Prior convictions*

PWID Heroin (DC):	1/21/1996	Yes	1 point
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<sup>16</sup> In order to keep these examples as simple as possible, we have not incorporated the supervised release portion of the sentence. The Guidelines do not change the statutory requirements for supervised release, the amount of which depends on the maximum sentence for the offense and not on the guideline prison range or the length of the sentence imposed (unless the sentence imposed is one year or less).

### *Explanation of Scoring*

PWID Heroin (Drug Group 2) is a 1 point offense, which puts the defendant in Column B.

### *Sentence*

The defendant's current offense and criminal history put him in box 8B, in which probation, a short split sentence or a prison sentence are permissible. The judge may impose a prison sentence anywhere in the range of 10 to 28 months for box 8B, suspend imposition of all of it (and the accompanying 3 years of supervised release) and place the defendant on probation for any period up to 5 years, the maximum allowed by statute. The judge may also sentence the defendant to a prison sentence between 10 and 28 months, suspend execution of all but six months or less to be followed by a period of probation up to 5 years. Or the judge can sentence the defendant to a prison sentence between 10 and 28 months. All of these options would be compliant.

A prison sentence of less than 10 months or greater than 28 months or a split other than a short split or a long split would not be a compliant sentence unless there is (a) a statutory enhancement or (b) a departure principle. Without an enhancement or a departure principle, a prison-only sentence of less than ten months or more than 28 months is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

### **9.3 Example 3 – Short Split Sentence Permissible**

Defendant was found guilty of Possession with Intent to Distribute (marijuana) while armed (Drug Grid Group 1), for an offense committed on 2/9/2004.

### *Prior convictions*

PWID Marijuana (misdemeanor)(DC):	6/7/2002	yes	¼ point
PWID Cocaine (DC):	4/5/2003	yes	<u>1 point</u>
			1¼ points

### *Explanation of scoring*

This offender's criminal history score is 1¼. The PWID marijuana conviction is a misdemeanor and is worth ¼ points. The PWID Cocaine conviction (Drug Group 2) is 1 point. The defendant is thus in column B.

### *Sentence*

The defendant's current offense and criminal history put him in Drug Grid Box 1B, which is a short split permissible box. The judge may impose a short split sentence. For a short split sentence to be compliant, the judge must impose an incarceration sentence that is within the prison range (36 – 78 months for Drug Box 1B) and suspend execution of all but six months or less. If, however, the judge decides to impose a straight incarceration sentence, the guideline grid calls for a prison sentence of 36 to 78 months. Thus, any sentence to incarceration between 36 and 78 months (including a long split) would be a compliant sentence, as would a short split sentence.

A prison-only sentence greater than 78 months would not be compliant unless there is (a) a statutory enhancement or (b) a departure principle. Similarly, a prison-only sentence of less than 36 months or a probation sentence would not be compliant unless there is a departure principle. Without a departure principle, probation only or a prison-only sentence of less than 36 months or more than

78 months or a split other than a short split or a long split is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

#### 9.4 Example 4 – Criminal History Issues: Adult Lapse and Misdemeanor Caps

Defendant pled guilty to Assault with a Dangerous Weapon (Master Grid Group 6), for an offense committed on 2/9/2004.

##### *Prior Convictions*

UUV (DC):	8/17/1980, sentence ended 10/20/1984	No
CPWL (DC):	5/3/1990, sentence ended 1/26/1992	No
Possession of heroin (DC):	7/6/1992	No
Possession marijuana (DC):	6/16/1999	Yes <sup>1</sup> / <sub>4</sub> point
Simple Assault (DC):	4/29/2000	Yes <sup>1</sup> / <sub>4</sub> point
2nd Degree Theft (DC):	6/7/2001	Yes <sup>1</sup> / <sub>4</sub> point
2nd Degree Theft (DC):	1/12/2001	Yes <sup>1</sup> / <sub>4</sub> point
Shoplifting (DC):	8/10/2002	Yes <sup>1</sup> / <sub>4</sub> point
Possession of marijuana (DC):	12/17/2002	Yes <sup>1</sup> / <sub>4</sub> point
Unlawful Ammunition (DC):	3/8/2003	Yes <sup>1</sup> / <sub>4</sub> point
		1 <sup>3</sup> / <sub>4</sub> points
	but cap of	1 <sup>1</sup> / <sub>2</sub> points

##### *Explanation of Scoring*

Because the two felony convictions and the possession of heroin conviction are beyond the 10-year window, they have lapsed. They cannot be revived by misdemeanor convictions and therefore do not count towards criminal history. There are seven non-lapsed misdemeanor convictions, which count for <sup>1</sup>/<sub>4</sub> points each EXCEPT that there is a cap of 1<sup>1</sup>/<sub>2</sub> points (six misdemeanors) on misdemeanor convictions. As a result, this defendant has a criminal history score of 1<sup>1</sup>/<sub>2</sub> points, putting him in column B.

##### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6B, which is a prison-only box. The prison range is between 24 and 66 months. A compliant sentence would be a prison sentence of no less than 24 months and no greater than 66 months. The lapsed criminal convictions did not count towards criminal history but the judge may consider them when deciding where within the prison range to sentence the defendant. The lapsed convictions are not an aggravating factor that would allow a departure from the prison range, but may be considered if enhancement papers have been filed.

A prison sentence of less than 24 months probation, or a short split, or a prison sentence of more than 66 months would not be compliant unless the judge finds a departure principle. Without a departure, a sentence of less than 24 months or more than 66 months is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

#### 9.5 Example 5 – Criminal History Issues: Adult Revival and Out-of-State Convictions

Defendant was found guilty of Distribution of Heroin (Drug Grid Group 2), for an offense committed on 2/9/2004.

### *Prior Convictions*

Receiving Stolen Property (felony):	11/22/1975	Yes	½ point
Possession of Heroin:	2/5/1982	No	0 point
PWID Cocaine (DC):	8/17/1983; sentence ended 9/17/1986	Yes	½ point
Attempted Murder (PA):	4/15/1997	Yes	<u>3 points</u>
			4 points

### *Explanation of Scoring*

The Receiving Stolen Property, Possession of Heroin and PWID Cocaine conviction are beyond the 10-year window and so have lapsed. The lapsed possession of heroin conviction is a misdemeanor and can never be revived. The non-lapsed felony conviction in 1997, however, revives the lapsed felony convictions. The revived Receiving Stolen Property conviction and the revived PWID cocaine conviction are ½ points each. The attempted murder conviction in Pennsylvania most closely matches DC's assault with intent to kill; therefore, it would be a group 5 offense worth 3 criminal history points. The final criminal history score is 4 points, putting this defendant in column D.

### *Sentence*

The defendant's current offense and criminal history put him in Drug Grid Box 2D, which is a short split permissible box. Thus the judge may impose either a short split or a prison sentence (including a long split). In either case, the judge must impose a prison sentence that is within the prison range (24 – 48 months for Drug Box 2D). For a short split sentence, the court may then suspend execution of all but six months or less. Thus, any sentence to incarceration between 24 and 48 months would be a compliant sentence, as would a short split sentence.

A prison sentence of less than 24 months or more than 48 months (including a long split), or a prison sentence between 24 and 48 months ESS all and placing the defendant on probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 24 months or more than 48 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

## **9.6 Example 6 – Criminal History Issues: Juvenile Adjudications**

The defendant pled guilty to Aggravated Assault (Master Grid Group 6), offense committed on 2/9/2004.

### *Prior Adjudications*

2nd Degree Sex Abuse (juv.)(DC):	1/02/1996	No	
released from Oak Hill,	2/3/1998	No	0 points
Unregistered Firearm (juv)(DC):	5/6/1999	No	0 points
Armed Robbery (juv)(DC):	9/8/1999	Yes	
released from Oak Hill	3/4/2001	Yes	1 ½ points
PWID Cocaine (juv)(DC):	4/5/2001	Yes	½ point
Carjacking (juv)(DC):	7/8/2001	Yes	
released from Oak Hill	11/30/2003	Yes	<u>1 ½ points</u>
			3 ½ points
			but cap of 1½ except for Master 1-5
			3 points

### *Explanation of Scoring*

The 2nd degree sex abuse adjudication was over 5 years ago. This adjudication has lapsed and cannot be revived. Unregistered firearm is a misdemeanor offense and juvenile misdemeanors are not counted towards criminal history regardless of when they were committed. The armed robbery adjudication is 1½ points, PWID cocaine is ½ points and carjacking is 1½ points. Juvenile adjudication criminal history points normally cap at 1½points, except that the armed robbery and the carjacking offenses are both group 5 offenses and therefore not subject to the juvenile cap. The PWID cocaine offense is subject to the cap. Thus, the criminal history for this defendant is 3 points, 1½ each from the armed robbery and the carjacking, but, practically speaking, no points from the PWID cocaine because of the cap. Three points puts the defendant in column C.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6C, which is a prison-only box. The prison sentence is 30 to 72 months.

A prison sentence of less than 30 months or more than 72 months, a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 30 months or more than 72 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

## **9.7 Example 7 -- Mitigating Factor**

Defendant was found guilty of Armed Robbery (Master Grid Group 5), for an offense committed on 2/9/2004.

### *Prior Convictions*

Armed Robbery (DC):	9/3/2000	yes	3 points
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### *Explanation of Scoring*

This offender's criminal history score is 3 for the prior armed robbery conviction. Three points puts the defendant in column C.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 5C, which is a prison-only box. The guideline grid calls for 60 to 108 months. Thus, any prison sentence between 60 and 108 months would be a compliant sentence. However, this defendant substantially assisted law enforcement in the apprehension of other offenders who, along with the defendant, were involved in a series of home invasions. As a result, the judge can sentence below the lower number of months in the sentencing range (60 months) by stating that he or she found a substantial and compelling mitigating factor (in this case, Mitigating Factor #7, providing substantial assistance to law enforcement) to depart downward. If the judge applies a guideline mitigating factor, this downward departure is a compliant sentence. The guidelines make no recommendation as to how far downward the judge should depart, but encourage judges to take into account proportionality to other defendants and other offenses in determining how far below the minimum sentence they should go.

## 9.8 Example 8 -- Aggravating Factor

Defendant pled guilty to Aggravated Assault (Master Grid Group 6), for an offense committed on 2/9/2004, victim was a disabled person.

### *Prior Convictions*

Simple Assault (DC):	4/2/2000	Yes	¼ point
Simple Assault (DC):	9/11/2001	Yes	¼ point
PWID Cocaine (DC):	0/3/2002	Yes	<u>1 point</u>
			1 ½ points

### *Explanation of scoring*

This offender's criminal history score is 1½. The only felony conviction is PWID Cocaine, which is a 1 point offense. The remaining two offenses are misdemeanors, which count for ¼ points each. All of them are in the 10-year window. A score of 1½ puts the defendant in Criminal History column B.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6B, which is a prison-only box with a sentencing prison range of 24 to 66 months. Thus, any prison sentence between 24 and 66 months would be a compliant sentence. However, the judge found Aggravating Factor #2, that the defendant assaulted a victim who was "...particularly vulnerable due to age or reduced physical or mental capacity." As a result, the judge can sentence above the higher number of months in the sentencing range (66 months) by stating that he or she found a substantial and compelling aggravating factor to depart upward. If the judge applies a guideline aggravating factor, this upward departure is a compliant sentence. The guidelines make no recommendation as to how far upward the judge should depart but encourage judges to take into account proportionality to other defendants and other offenses in determining how far above the maximum sentence they should go.

## 9.9 Example 9 -- Enhancements

Defendant was found guilty of Distribution of Cocaine in a Drug Free Zone for an offense committed on 2/9/04.

### *Prior Convictions*

Distribution of Cocaine	8/24/89		
sentence finished	1/9/94	No	0 points

### *Explanation of Scoring*

The sentence for defendant's only prior conviction was completed more than ten years before the commission of the instant offense. Therefore, for scoring purposes, it is not counted and the defendant has zero criminal history points.

### *Sentence*

Defendant's current offense and criminal history score put him in Drug Grid box 2A, in which the court may impose a prison-only sentence (including a long split), a short split sentence, or straight probation. The prison range in Drug Grid box 2A is 12 to 30 months. In this case, there are two

factors that can raise the upper number. First, the current offense is distribution of cocaine in a drug free zone. Under D.C. Code § 48-904.07a(b), the maximum sentence for this offense is twice that for simple distribution of cocaine. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). Second, if enhancement papers were filed in this case under D.C. Code § 48-904.08, the maximum sentence for a second drug offense is twice that of the first. The 8/24/89 conviction for distribution of cocaine that was not counted for scoring purposes can nonetheless be used for enhancement purposes. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). In this case, a prison sentence of 12 to 60 months, a short split sentence, or straight probation would be compliant.

Note: The fact that there are two enhancements in this example does not mean that the upper number is raised twice. In situations where one enhancement is greater than the other, the court would have the option of applying the higher of the two.

### **9.10 Example 10 -- Concurrent sentences**

Defendant was found guilty of two offenses: Unauthorized Use of a Vehicle (Master Grid Group 8) and Possession of a Prohibited Weapon (Master Grid Group 9). Both offenses were committed on 2/9/2004.

#### *Prior Convictions*

Bail Reform Act (felony)	6/17/98	Yes	1 points
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#### *Explanation of scoring*

Defendant has one prior convictions for a 1-point offense. A score of 1 point puts the defendant in Criminal History column B.

#### *Sentence*

The defendant's current offenses and criminal history put him in Master Grid Box 9B and Box 8B. These light gray boxes indicate that probation is a permissible sentence, as is a short split or a straight prison sentence. First, the judge should make the in/out decision. If the judge decides not to impose a term of probation but to sentence the defendant to a term of incarceration, the prison range for the PPW is 3 to 16 months and for the UUV is 10 to 28 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. Because these are nonviolent crimes, multiple offenses, one transaction (a search of the car incident to the arrest for the UUV found a prohibited weapon), the guidelines rule is that these sentences should be run concurrently. Unless the judge finds that the resulting sentence would be too lenient (Aggravating Factor #10), these sentences must be imposed concurrently. It also would be a compliant sentence to give a term of probation for each offense or a short split sentence.

### **9.11 Example 11 -- Consecutive sentences**

Defendant pled guilty to two counts of Armed Robbery (Master Grid Group 5), for separate offenses that were committed on 2/9/04.

#### *Prior Convictions*

No prior convictions. This offender's criminal history score is zero, which puts the defendant in criminal history column A.

### *Sentence*

The defendant's current offenses and criminal history put him in Master Grid Box 5A, which is a prison-only box. The prison range is 36 to 84 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. The defendant was convicted of two crimes of violence, multiple victims, multiple transactions (wielding a knife, the defendant had robbed one pedestrian and then a few minutes later robbed another pedestrian.) The guideline rules call for consecutive sentences in such cases. Unless the judge finds that the resulting sentence would be too harsh (excessive) (Mitigating Factor #9), these sentences must be imposed consecutively.

### **9.12 Example 12 -- Criminal History counts for one offense, not for another**

Defendant was found guilty of one count of Armed Robbery (Master Grid Group 5), for an offense committed on 2/9/04, and one count of First-Degree Burglary while armed [BI w/a] (Master Grid Group 3) for an offense that was committed on 3/17/03. Sentencing on the same day.

#### *Prior convictions*

		<u>Armed Robbery</u> 2/9/2004		<u>Burglary I while armed</u> 3/17/2003	
Armed robbery	8/23/1974	No	0	Yes	3 points
Attempted robbery	4/07/1979	No	0	Yes	½ points
Robbery	11/23/1984	No	0	Yes	
sentence ended	7/29/1993	No	<u>0</u>	Yes	<u>2 points</u>
			0 points		5 ½ points

#### *Explanation of scoring*

The sentences in all of the defendant's prior cases were completed beyond the 10-year window in the armed robbery case. In other words, they were completed more than ten years before he committed the armed robbery on 2/9/04. Therefore, none of them count in calculating the defendant's criminal history score for that offense. However, the sentence for the 11/23/84 robbery was not completed until 7/29/93, within the 10-year window or less than ten years prior to the commission of the 3/17/03 BI w/a. It is therefore counted fully at 2 points (Master Grid 6). The same case revives the older felony convictions, but one of them counts for half, ½ point for the attempted robbery (Master Grid 8) and the other counts fully, 3 points for the Armed Robbery (Master Group 5).

This offender's criminal history score is 5 ½ points for the BI w/a while armed, which puts the defendant in criminal history column D. The defendant's criminal history score is zero points for the armed robbery, which puts the defendant in criminal history column A.

### *Sentence*

The defendant's current offenses and criminal history put him in Master Grid Box 5A for the armed robbery and Master Grid Box 3D for the first-degree burglary while armed. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3D is between 126 and 216 months. Because these are crimes of violence that were committed on separate occasions, they must be sentenced consecutively. Thus, the minimum possible aggregate sentence would be 162 months (36+126) and the maximum possible aggregate sentence would be 300 months (84+216).



A prison sentence of less than 162 months (13½ years) or more than 300 months (25 years), a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 162 months or more than 300 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the guidelines in this case.

If enhancement papers had been filed in this case, the offenses that did not count for the criminal history score in the armed robbery case could, nonetheless, count as two prior crimes of violence that would subject the defendant to a maximum sentence of life without release under D.C. Code § 22-1804a(a)(2). Under these circumstances, any aggregate sentence between 162 months and the statutory maximum would be compliant.

### **9.13 Example 13 -- Order of sentencing**

A co-defendant of the offender in Example 12 was found guilty of one count of Armed Robbery (Master Grid Group 5), for an offense committed on 2/9/04, and one count of First-Degree Burglary while armed [BI w/a] (Master Grid Group 3) for an offense that was committed on 3/17/03. Sentencing in the Armed Robbery case was the day before sentencing in the BI w/a case.

#### *Prior convictions*

AR – no prior convictions

BI w/a – the AR is a prior conviction, 3 points

#### *Explanation of scoring*

At the time the AR was sentenced, the defendant had no prior convictions. The BI w/a was still pending sentencing even though the BI w/a was committed before the AR was. Because the AR was sentenced before (on a different day) the BI w/a, it is a prior conviction for the BI w/a and counts for 3 points.

The defendant's criminal history score is zero points for the armed robbery, which puts him/her in criminal history column A. This defendant's criminal history score is 3 points for the first-degree burglary while armed, which puts him/her in criminal history column C.

#### *Sentence*

The defendant's current offenses and criminal histories put him in Master Grid Box 5A for the armed robbery and Master Grid Box 3C for the first-degree burglary while armed. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3C is between 114 and 204 months. The rule requiring consecutive sentences applies only to offenses sentenced on the same day. See § 6.1. These cases were sentenced on different days. Therefore, in sentencing the BI w/a, the court has discretion to determine whether it should run consecutively to or concurrent with the armed robbery.

### **9.14 Example 14 -- Rule 11(e)(1)(C) plea**

Defendant pled guilty to ADW (Master Grid Group 6) for an offense committed on 2/9/2004.

#### *Prior convictions (or Criminal history)*

None.

### *Explanation of scoring*

N/A.

### *Sentence*

The government and the defendant agreed to a Rule 11(e)(1)(C) plea. They agreed that if the defendant pled guilty to ADW, the sentence would be 24 months, ESS all, and 3 years probation. The parties also agreed that the defendant would spend the first six months in a halfway house *as a condition of probation*. See D.C. Code § 16-710(b-1). The defendant's case falls in box 6A (dark gray), which permits a short split sentence. However, if a short split sentence instead of a probation sentence were imposed, the initial period of incarceration of six months or less would be controlled by the Bureau of Prisons, which cannot send a person to a halfway house at the beginning of a sentence. By agreeing to six months in a halfway house as a condition of probation, the parties could ensure that the defendant would be sent to a halfway house in the District of Columbia so that he or she could maintain his or her employment. Box 6A does not permit an entirely suspended sentence with probation (absent a departure based on a mitigating factor). However, if the court accepts the Rule 11 (e)(1)(C) plea, the court may (in fact, must) impose the agreed-upon sentence of 24 months, ESS all, three years probation with the first six months in a halfway house. This is a *compliant* sentence. The judge need explain only that the sentence was imposed pursuant to a Rule 11 (e)(1)(C) plea. The judge, of course, does not have to accept an 11(e)(1)(C) plea agreement.

### **9.15 Example 15 – Long Split**

Defendant pled guilty to ADW (Master Grid Group 6) for an offense committed on 2/9/2004.

### *Prior convictions*

Possession (heroin) (DC):	3/8/1998	Yes	¼ point
Possession drug paraphernalia (DC):	6/11/2000	Yes	¼ point
Possession (cocaine) (DC):	1/10/2001	Yes	¼ point
Uttering (DC)	9/20/2002	Yes	<u>1 point</u>
			1¾ points

### *Explanation of scoring*

The possession charges are all misdemeanors and are counted ¼ points each. The Uttering (Master Group 9) is 1 point.

### *Sentence*

The defendant's current offense and criminal history put him in Master Grid Box 6B. Box 6B is a prison-only box. For any number of reasons, the judge might find that a split sentence is appropriate in the instant case, perhaps "to have more time hanging over the defendant's head" than if the judge imposed a straight prison sentence followed by supervised release. The judge could impose a "long split." In a long split, both the sentence the judge imposes and the time to be served initially must fall within the prison range in the appropriate box. The prison range for Box 6B is 24 to 66 months. Thus, the judge could impose a sentence of 60 months and 3 years of supervised release and suspend all but 24 months of the prison term and the period of supervised release and place the defendant on probation for five years. Because both prison terms fall within the range, it is a compliant sentence, even in a prison-only box.

Note: It would not be permissible for the judge to impose a sentence of 60 months and suspend execution of all but 12 months since, in a long split, both sides have to be in the box and 12 months is below the prison range in Box 6B. It would also not be permissible for the judge to impose a sentence of 72 months and suspend execution of all but 24 months since 72 months is above the prison range in Box 6B

Note: Because prison is an option in every box on both grids, a "long split" is also a compliant option in every box as well, as long as the sentence imposed and the time to be served initially (the time left unsuspended) fall within the box's prison range.

## 9.16 Example 16 -- Multiple counts; merger; mandatory minimums

Defendant was found guilty of armed robbery (operable firearm) (M5); 2 counts of APO with a dangerous weapon (M6), two counts of ADW (M6), 3 counts of PFCOV (M6), and CPWL (M8) in a case where he robbed a store clerk at gunpoint and shot at two plain clothes police officers who spotted the defendant identified themselves, and ordered him to stop.

### *Prior convictions*

Distribution (cocaine) (DC): 7/23/2001 Yes 1 point

### *Explanation of scoring*

Distribution of cocaine is a Drug Grid 2 offense which carries 1 point. This would put defendant in column B.

### *Sentence*

Both Master Grid 5B and Master Grid 6B are prison only boxes. Master Grid 8B is a prison, short split, or probation permissible box. There are three victims (store clerk and two police officers) regardless of whether this is considered to be one event or two events (armed robbery as one; shooting of police as two). Armed robbery, APO w/ dangerous weapon, ADW, and PFCOV are violent crimes. Therefore, one of these offenses for each victim must be sentenced consecutively to one offense for each of the others. Both Master Grid 5B and Master Grid 6B offenses are prison only boxes. Master Grid 8B is a prison, short split, or probation permissible box. Armed robbery (operable firearm) and PFCOV are in Box 5B which has a prison range of 48 to 96 months. However, both offenses have a mandatory minimum of 60 months. CPWL is not a crime of violence.

The Court of Appeals instructs that a sentence should be given for each offense even though ultimately some of the above offenses will likely merge: ADW into APO w/ dangerous weapon and the two counts of PFCOV for the shooting of the police officers. The possible sentencing options are as follows:

Armed robbery (operable pistol)	60 -- 96 months	MM
APO w/ dangerous weapon (officer 1)	24 -- 66 months	
ADW (officer 1)	24 -- 66 months	
APO w/ dangerous weapon (officer 2)	24 -- 66 months	
ADW (officer 2)	24 -- 66 months	
3 counts PFCOV (one for each of the above)	60 -- 96 months	MM
CPWL	6 -- 24 months	(or probation or short split)

Applying the consecutive/concurrent rules, the lowest possible aggregate sentence that could be given in this case is:

(1)(a)	Victim 1: Armed robbery (operable pistol)	60 months
(1)(b)	Victim 2: APO w/dangerous weapon for first officer concurrent with ADW (which will merge)	24 months
(1)(c)	Victim 3: APO w/ dangerous weapon for second officer concurrent with ADW (which will merge)	24 months
(2)	(1)(a), (b), and (c) consecutive to each other	<u>108 months</u>
(3)	PFCOV for APO w/ dangerous weapon of second officer (60 months) concurrent with PFCOV for APO w/ dangerous weapon of first officer (60 months) which will merge, concurrent with PFCOV for AR (60 months), which will not merge if different events, and concurrent with (2)	--
(4)	CPWL (6 months) concurrent with (2)	--

Applying the consecutive/concurrent rules, the highest possible aggregate sentence that could be given in this case is:

(1)	Armed robbery	96 months
(2)	APO w/ dangerous weapon merges w/ADW	66 months
(3)	APO w/ dangerous weapon merges with ADW	66 months
(4)	PFCOV for armed robbery	96 months
(5)	PFCOV for APO w/ dangerous weapon of second officer (96 months) concurrent with PFCOV for APO w/ dangerous weapon of first officer ((96 months) which will merge	96 months
(6)	CPWL	<u>28 months</u>
(7)	(1) through (6) consecutive to each other	448 months